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January 30, 2003

BY HAND DELIVERY

& FIRST CLASS MAIL #7106 4575 1294 0714 1778

Re: In the Matter of the Provision of Basic Generation Service ("BGS")
Pursuant to the Electric Discount and Energy Competition Act,
N.J.S.A. 48:3 - 57
Docket No. EX 01110754

Board of Public Utilities
State of New Jersey
c/o Kristi Izzo, Secretary
Two Gateway Center
Newark, NJ 07102

Dear Secretary Izzo:

We represent Geophonic Networks, Inc. ("Geophonic"), the holder of U.S. Patent No. 6,047,274 (the "'274 Patent"), entitled "Bidding for Energy Supply." The '274 Patent applies to energy auctions such as the first BGS auction held in February 2002 and the second BGS auction planned for February 2003.

On January 30, 2003, the United States Patent & Trademark Office published U.S. Patent Application Serial No. 10/062,798, as amended September 18, 2002 (the "Application"), as the result of Geophonic's request for early publication made pursuant to 35 U.S.C. § 122(b). The published Application is attached for your reference.

The published Application is in the format electronically submitted to the USPTO as part of the early publication process. To facilitate easier reading, we have also attached a copy of the Application as originally filed in hard copy on January 31, 2002 and amended on September 18, 2002.

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The published Application contains 112 new claims, all of which are fully supported in the original patent specification filed with the USPTO in 1997 and 1998 and which resulted in the '274 Patent issued in April 2000. These 112 new claims, when added to the claims issued as part of the '274 Patent, make it even more certain that the February 2003 BGS auction will infringe Geophonic's patent rights.

This letter shall serve as notice to the Board of Public Utilities (the "BPU") of the publication on January 30, 2003 of the Application. Under 35 U.S.C. §154 (d) (copy enclosed), the publication of the Application provides Geophonic with the right, before a patent is issued, to a reasonable royalty from any person who had actual notice of the published Application and who makes, uses, offers for sale or sells in the United States the invention as claimed in the published Application. This right to a reasonable royalty accrues immediately.

Geophonic's right to a reasonable royalty under 35 U.S.C. §154 (d) assumes that the invention as claimed in the patent (when issued) resulting from the Application is substantially identical to the invention as claimed in the published Application. As a point of reference, the BPU should be aware that the claims in the application for the earlier '274 Patent were allowed by the U.S. Patent & Trademark Office with no changes. We expect a similar outcome for the attached Application.

We again respectfully assert that the BPU, as a result of its extensive involvement in the development and implementation of the February 2002 BGS auction process and with full knowledge of the '274 Patent, infringed the '274 Patent and/or induced infringement of the '274 Patent by the EDCs and others. In addition, we respectfully assert that the BPU, as a result of its extensive involvement in the development and implementation of the February 2003 BGS auction process, is infringing and/or inducing the infringement of the '274 Patent and Geophonic's provisional royalty rights under 35 U.S.C. §154 (d) in connection with the published Application. This constitutes a taking of private property rights by a New Jersey state governmental agency without due compensation to Geophonic, the holder of such property rights.

As we have stated in our prior correspondence with the BPU, Geophonic continues to stand ready to provide a license to the BPU and/or any or all of the four participating EDCs, at a reasonable royalty rate, for the use of Geophonic's patented energy auction process in BPU-approved BGS auctions.

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Finally, if Geophonic and the BPU and/or the EDCs are unable to negotiate a resolution to this matter in the near future, we again respectfully submit that the BPU may need to advise its outside auditor examining Deferred Balances of the EDCs that this matter is still pending, since some of the license fees in question would be attributable to timeframes within the EDECA transition period.

We look forward to discussing this matter further with the BPU or its representatives.

Very truly yours,



David W. Opderbeck

Attachments

cc: Jeanne M. Fox, BPU President
Frederick F. Butler, BPU Commissioner
Carol J. Murphy, BPU Commissioner
Connie O. Hughes, BPU Commissioner
Jack Alter, BPU Commissioner
Nusha Wyner, Director – Division of Energy
Irah H. Donner, Esq. (EDCs' outside counsel)

United States Code Title 35 - Patents

35 U.S.C. 154 Contents and term of patent; provisional rights.

(d) PROVISIONAL RIGHTS.—

(1) IN GENERAL.— In addition to other rights provided by this section, a patent shall include the right to obtain a reasonable royalty from any person who, during the period beginning on the date of publication of the application for such patent under section 122(b), or in the case of an international application filed under the treaty defined in section 351(a) designating the United States under Article 21(2)(a) of such treaty, the date of publication of the application, and ending on the date the patent is issued—

(A) (i) makes, uses, offers for sale, or sells in the United States the invention as claimed in the published patent application or imports such an invention into the United States; or

(ii) if the invention as claimed in the published patent application is a process, uses, offers for sale, or sells in the United States or imports into the United States products made by that process as claimed in the published patent application; and

(B) had actual notice of the published patent application and, in a case in which the right arising under this paragraph is based upon an international application designating the United States that is published in a language other than English, had a translation of the international application into the English language.

(2) RIGHT BASED ON SUBSTANTIALLY IDENTICAL INVENTIONS.— The right under paragraph (1) to obtain a reasonable royalty shall not be available under this subsection unless the invention as claimed in the patent is substantially identical to the invention as claimed in the published patent application.

(3) TIME LIMITATION ON OBTAINING A REASONABLE ROYALTY.— The right under paragraph (1) to obtain a reasonable royalty shall be available only in an action brought not later than 6 years after the patent is issued. The right under paragraph (1) to obtain a reasonable royalty shall not be affected by the duration of the period described in paragraph (1).